

13 scenarios that prompt substitution

First of all, let's take it back to basics. A 'right of substitution' is ultimately the ability of a contractor to send a suitable replacement for completing the contractors' predetermined duties. The substitution must involve a comprehensive handover, as well as adequate supervision and payment over the course of substitution, by the contractor. It's also used as one of the official tests in establishing IR35 employment status. So, if you'd like to avoid an additional possible 25% more in tax every year, then best to make sure your substitution clause is up to scratch!

However, the substitution clause isn't there for merely ticking boxes to avoid the taxman, only being considered applicable in a last resort situation. Many contractors fear using their substitution clauses, often stemming from a host of online literature deeming clauses to be used solely for illness and unexpected absences etc. In contrast, the substitution clause is actually there to be welcomed in a range of different circumstances. Maybe you can't fulfil the contracted duties, or maybe you just don't want to, the substitution clause works to open up your options. The [HMRC manual](#) also validates this, 'in the event that the contractor is unable or unwilling to perform the services personally, he shall arrange at his own expense entirely for another suitable person to perform the services.' For clarity, HMRC internal manuals are the processes that HMRC caseworkers use when dealing with Enquiries and investigations. Knowledge workers who seek to employ substitution only

in emergency situations, would find sourcing replacements difficult within pressurised timeframes. Even from an end client perspective, it is far better for them to be presented with your decision to substitute at a time of less business criticality, than it is at a time when your ability or willingness to deliver services personally is reduced.

Not to be neglected, the relationship with your client is paramount. The right substitution can be used to the advantage or disadvantage of clients. Not advisable to do the latter. Do read our substitution code of good practice. Designed for contractors and clients alike, and endorsed by an increasing number of clients, your alignment to this code of good practice will put your clients mind at ease in offering you an outside IR35 role.

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In a recent market research we conducted, a remarkable 70% of participants voiced that they couldn't exercise their substitution clauses because a need never arose. Through further questioning, we discovered that in fact various events for invoking substitution

were not recognised. In our cause the root cause of such failure to recognise opportunities emanated from a lack of consideration of HMRC internal manuals and to reflect deeply on the substitution, instead over reliance on general consensus.

Without further ado, we list some examples for you of when to put your substitution clause into good use...

Location:

1. You have a planned visit abroad for personal reasons.

That long-awaited holiday is finally in sight and you know your client just cannot wait till you've thoroughly detoxed in the Hawaiian sun, to receive your services. By establishing the need for a substitute well in advance, you're able to be selective and carefully recruit the best substitute, not merely the last available at late notice. This may also help standardise the willingness of clients to accept substitution as common practise. As in the aforementioned study, under client's willingness, 70% of participants doubted the contractor's ability to source the best substitute and hence were hesitant to accept the use of substitution clauses. Thus, normalising the use of substitution clauses with advance warning is likely to put clients at ease and more likely to accept future substitutions.

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A detailed brief of the clients' needs can then be given to the substitute without rushing, and you can leave knowing your work is being left in capable hands. We would always recommend planning for some level of interaction with the substitute and escalation channels for the client, with you whilst you are away. On return, if the client is happy with the substitutes' work then you can also keep in contact with the substitute for covering any other upcoming holidays and be reassured that they will maintain your quality of service.

2. Work opportunities have arisen in other locations and the opportunity cost is just too high to ignore.

Work is calling and it seems you are needed or desired elsewhere. Regardless of whether it be long-term or short-term, you believe this work to be too good to miss out on. At the same time however, the ability to return at some point in the future and resume previous contracts would provide peace of mind. This would be the perfect opportunity to exercise your substitution clause. Provide a competent substitute, and know that you're maximising satisfaction of clients, all under your brand name. Widening your services across various locations, providing your quality is maintained, is a great way to raise awareness of your business to potential customers and heighten the desire for your services.

Function:

3. You are an expert in the field for a certain aspect of the role, but not in the other.

A work opportunity has arisen, yet you lack confidence in your ability to fulfil all aspects of the clients' requirements. If the role is such that the parts you are less comfortable in to follow on from the parts more suited to your

expertise, you could arrange a substitute for the former. This could even be used as a strategic tool in an interview with a recruiter, offering awareness of your strengths and weaknesses, and your knowledge of substitute contacts to call upon if necessary. Therefore, offering the recruiter not only your skills, but a pool of skills to call upon when needed.

4. You find some parts of the role to be less enjoyable.

You are not really keen to do bits of your role; come on we all have our favourites. Why put yourself through parts of a role which you find to be a drag. Much to your surprise, someone out there will actually enjoy your 'chores'. So, use that substitution clause and spend more time doing those parts of your job which you enjoy. It's also likely to enhance your motivation and thus productivity, allowing you to tick off your clients' to-do list at a much faster pace. Jobs finished on time/early = happy customers. Happy customers = customer loyalty + word of mouth marketing. And it continues... it's an endless positive multiplier effect really. If you're expertise is in demand, then the overall impact will likely outweigh the initial expense of substitution. From a legislation point of view, someone else doing bits of your work whilst you are doing others – is not classed as a "substitute" but a "helper". However, there may be a case where such work may be sequential, in which case, this could well qualify as a substitute.

5. You need a scribe for a listen only multi day workshop where only a few bits will be relevant.

Hiring a scribe for the whole event can be quite an expense, whereas attending the

event yourself only for the relevant speeches listed and using a substitute for any clashing work commitments for those limited hours may be less costly. As you may have realised from the previous reasons for exercising your substitution clause, there is quite a theme building of 'opportunity cost'. Ultimately you have to decide what situation is more worthy and hence less costly of your time, then looking for a substitute if necessary.

Contract:

6. You need to exit a contract, but a termination is proving difficult.

For various reasons, some contracts you just can't get out of as easily as you'd like. Contractors often have limited options when trying to exit a contract that has no notice or termination clause. By leaving the contract with the agency or client early, contractors end up making their business vulnerable to a claim for damages for breach of contract. Often the easiest solution to leave a contract prematurely can involve offering a substitute to the client: leaving you to move onto your next project.

7. You want to elevate your role to supervisory and outsource the operational.

Tired of the same old back-breaking work? Ready to settle down into more of a supervisory role, yet continue to keep your name relevant in the industry whilst supporting your ongoing clients' needs? Sounds quite appealing to be honest. Utilising substitution clauses would allow you to continue providing services in an industry you've grown expertise in, without the necessity to be as hands on, or give up your work autonomy by joining a corporate. It is also likely you've spent a while in the

industry, having built up a sound knowledge of reputable competitors and newer market entrants. This knowledge will be well-suited to identifying contractors to subcontract work to, without diminishing reputation.

8. You have become way too indispensable to a client and desire to shake things up.

Realising your indispensability, and how you've become part and parcel of a client organisation, you may desire to shake things up by putting in a substitute for a short term. This may be implemented as a strategy for breaking out of a standardised daily work routine and spicing it up by catering to other potential client's needs. Or it may even be a more strategic move for advancing your services. By substituting yourself with a replacement of supposedly the same qualifications and standard as yourself, the extra mile you may go to satisfy clients may prove too hard to lose by clients, and as a result, one condition of returning to work may necessitate a pay rise.

9. You want to remain indispensable both during and after a planned absence.

It's nice to feel needed. Sometimes leaving a client without a replacement, even for a short-term planned absence, your clients may learn to live without your services. To avoid the risk of becoming dispensable, offering a substitute will likely allow you to control and retain knowledge during that period of absence. Also, leaving your clients none-the-wiser of whether or not they could cope without you.

Tax:

10. You want to exercise your clause to put any suspicion about your employment status to rest.

As an important indicator for whether you sit inside or outside the IR35, briefly mentioned at the start, testing out your substitution clause can be a great way to prove the validity of it. Many HMRC investigations have taken place over 'sham' substitution clauses, attempting to disprove contractor's claims of laying outside the IR35 tax requirements. However, if an actual substitution is carried out and evidenced early on in the HMRC enquiry, it is very likely the HMRC will drop the investigation.

Personal Interest / Community Related:

11. You desire to have multiple clients at a time and want to test a short-term role with another client.

Juggling clients can be testing at times, before jumping straight into the deep end, testing the waters may be less harming to customer satisfaction and your general wellbeing. Before signing multiple contracts, hiring a substitute for your current client can help you to decide whether the second client is a good fit for your services, without toppling your workload over an unbearable level.

12. You want to pursue a hobby / attend an event of personal interest which conflicts a time when your services are likely required by the client.

Despite being a contractor and likely looking to maximise your client time and subsequent

income, creating a good work life balance should still remain a priority.

By rewarding yourself for your dedication to work 99% of the time, using a substitute as a replacement for one off occasions will likely benefit your social life and overall wellbeing.

Pursuing hobbies you've neglected whilst fulfilling client's requests, or trying out new hobbies at the sacrifice of other work opportunities is likely to help improve your on job focus and engagement for the rest of your clients. This ultimately allows yourself time to fully 'switch on and off' from work mode with less of an overlap. The same goes for attending events of personal interest. By rewarding yourself for your dedication to work 99% of the time, using a substitute as a replacement for one off occasions will likely benefit your social life and overall wellbeing.

13. You have aging relatives abroad / someone you give care to. It's a pattern requiring you to work on and off, in a work where the role is needed continuously.

Working in an ongoing role with the continuous requirement for your services provides sound of mind for many. However, supporting family and friends is extremely important, even if their needs may make long-term contracts difficult to fulfil routinely. No-one likes to feel as if they are leaving someone in the lurch, especially more than once. So utilising substitution clauses to

supply a competent replacement whilst you're away to satisfy your client and provide yourself with the knowledge of work and an income awaiting your return, is a win-win for all contract parties.

Finally

We hope our white paper has opened your mind to some opportunities where you could realistically pitch a substitution to your client.

We understand this is only one element of the substitution problem – the bigger challenge is how to increase the prospects of your client accepting substitution. Nonetheless, this paper addresses what is entirely in your control as a contractor i.e. the act of initiating a substitution conversation. Substitution has to be initiated by a contractor, for it to have any chance of happening.

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All said, we are privy to the client willingness challenge. Follow us on [LinkedIn](#) or [Twitter](#), as we are going to address this challenge very soon.